IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 8454 of 2006
with
CRIMINAL MISC.APPLICATION No. 2321 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRI KIRTBHAI VASANTBHAI GOHEL & 1 - Applicant(s)
Versus
THE STATE OF GUJARAT - Respondent(s)

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Appearance :
M/S THAKKAR ASSOC. for Applicant(s) : 1 - 2.
PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 02/08/2007

ORAL JUDGMENT

As common question of law and facts arise in both these applications and arising out of a common complaint as well as charge sheet, they are being

disposed of by this common judgment and order.

2. A criminal complaint came to be filed by the respondent No.2,- Registrar of Gujarat Pharmacy Council being C.R. No. I 245 of 2002 with the Meghaninagar Police Station against five accused persons (not the petitioners) for the offence punishable u/s 406, 420, 465, 468, 471, 511, 120-B and 114 of the IPC and after the investigation, the charge sheet came to be filed by the concerned Investigating Officer on 29-12-2004 against the ten accused inclusive of the petitioners. Being aggrieved by the same, the petitioners, original accused No.10 (petitioner of Criminal Misc. Application No.2321 of 2006) as well as the petitioners, - original accused Nos.6 and 7 (petitioners of Criminal Misc. Application No.8454 of 2006) have preferred both these applications for quashing the complaint as well as the charge sheet thereof qua the petitioners.

3. Shri PM Thakkar, ld. Senior advocate appearing in Criminal Misc. Application No.8454 of 2006 and Shri Mehul Sharad Shah, learned advocate appearing in Criminal Misc. Application No.2321 of 2006 have submitted that the petitioners were not named in the FIR and subsequently also, the complaint did not involve the petitioners in the crime. It is submitted that during the course of the investigation, the Investigating Officer has not collected any evidence against the petitioners and only on the basis of the statement of the co-accused, the petitioners have

been involved in the offence. It is submitted that the statement of the co-accused is not a part of the charge sheet and has no evidenciary value in the eye of law. It is submitted that in the entire charge sheet papers, there is no whisper about the petitioners, even then the petitioners are shown as accused Nos.6,7 and 10 in the charge sheet. It is submitted that during the course of the investigation also, no incriminating material is found against the petitioners. It is also submitted that handwriting of the petitioners was sent to the FSL but the reports are negative. It is submitted that there is no material and/or evidence against the petitioners for the commission of the offence alleged for which charge sheet is filed and therefore, it is requested to quash the complaint as well as the charge sheet qua the petitioners. It is submitted that considering the above, to continue the criminal proceedings against the petitioners would be unnecessary harassment to the petitioners and the same would be abuse of process of law. Under the circumstances, it is requested to exercise the powers u/s 482 of Criminal Procedure Code.

4. Shri Mengdey, ld. APP after considering the entire charge sheet papers and even other case papers, is not in a position to show to this Court any incriminating material/evidence against the petitioners. It is submitted that the case against the petitioners is only on the basis of the statement of the co-accused.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. It is to be noted that the petitioners were not named in the FIR. During the course of the investigation also, the petitioners were not named in the complaint. This Court has considered the entire charge sheet papers as well as case papers from the concerned Investigating Officer as well as the entire charge sheet papers produced along with Criminal Misc. Application No.2321/06 and on going through the same, it appears that except the statement of the co-accused, there is no material and/or evidence against the respective petitioners. Even the handwriting of the petitioner was also sent to the FSL but the report seems to be negative. Thus, on considering the entire charge sheet papers, as such there is no material and/or evidence against any of the petitioners. It appears from the record and the submission of the ld. APP that the petitioners are shown as accused Nos.6,7 and 10 on the basis of the statement of the co-accused. It is to be noted that the statement of the co-accused is not part of the charge sheet papers. It is not disputed that the statement of the co-accused is inadmissible in evidence and therefore, rightly the statement of the co-accused is not part of the charge sheet. Under the circumstances, when there is no material and/or evidence against the petitioners by which it can be said that the petitioners have committed the offence as alleged for which charge

sheet is filed and therefore, to continue the criminal proceedings against the petitioners would be abuse of process of law and unnecessary harassment to the petitioners. It is not even the case of the State that there is any connecting material and/or evidence against the petitioners. Under the circumstances, the impugned complaint and the charge sheet against the petitioners, original accused Nos.6,7 and 10 requires to be quashed and set aside.

7. For the reasons stated above, the applications succeed. Both the impugned complaint being C.R. No. I 245 of 2002 registered with Meghaninagar Police Station and the charge sheet thereof are hereby quashed and set aside so far as the respective petitioners i.e. original accused Nos.6,7 and 10 are concerned. Rule is made absolute to the aforesaid extent in each application.

(M.R. Shah, J.)

shekhar/-